

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the examiner to provide reasons and/or examples, to support any conclusion in regard to patentable distinctness (M.P.E.P. § 803). Applicants respectfully traverse the restriction requirement on the grounds that the Examiner has not carried the burden of providing sufficient reasons and/or examples to support any conclusion that the claims of the restricted groups are patentably distinct.

The Examiner concludes that the restricted groups are patentably distinct because "...they have a separate status in the art as shown by their different and separate subject matter..." However, this reason is insufficient to meet the "appropriate explanation" criteria required under § 803.

Therefore, the Examiner's reasoning is nearly a restatement of the Examiner's conclusion that the three groups are patentably distinct. As the Examiner has provided insufficient reasons in support of his belief the Examiner has not met the burden placed upon him, and accordingly, the restriction is believed to be improper and should be withdrawn.

Applicants submit this application is now in condition for examination on the merits and early notification of such action is earnestly solicited.


Respectfully submitted,

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